

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL RUSSO,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
WILLIAM J. HENDERSON,	:	
POSTMASTER GENERAL,	:	
UNITED STATES POSTAL SERVICE,	:	
Defendant.	:	NO. 00-CV-4619

MEMORANDUM & ORDER

J.M. KELLY, J.

MAY 22, 2001

Defendant, William J. Henderson ("Henderson"), the Postmaster General of the United States Postal Service, has filed the present Motion for Summary Judgment against Plaintiff, Daniel C. Russo ("Russo"). Russo, who is appearing pro se, has not filed a Response to the Motion for Summary Judgment.

BACKGROUND

Russo's Complaint alleges sexual harassment pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994). Specifically, Russo alleges that in 1995, while employed by the United States Postal Service as a Maintenance Manager, he was demoted to Maintenance Supervisor and transferred because of allegations¹

¹ The parties have not enumerated the 1995 allegations against Russo. For the purpose of this Motion, the Court assumes that the parties recognize that the 1995 incident would be barred by Title VII's statute of limitations.

made by his co-worker, Cindy McBrearty ("McBrearty"). In November of 1997, McBrearty followed Russo home from work. In January of 1998, Russo learned that he and McBrearty were scheduled to attend the same seminar in Oklahoma. McBrearty subsequently withdrew from the seminar. Russo refers to the actions of McBrearty as "stalking."

STANDARD OF REVIEW

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment

"after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

Although Russo failed to file a timely response to the instant Motion for Summary Judgment, the Court cannot grant the motion as uncontested. The courts cannot grant motions for summary judgment merely because they are unopposed, even if no response is ever filed. See E.D. Pa. R. Civ. P. 7.1(c). Instead, the Court is required to conduct its own examination of whether granting summary judgment is appropriate. Fed. R. Civ. P. 56(e) ("If the [nonmovant] does not so respond, summary judgment, if appropriate, shall be entered against the [nonmovant].").

DISCUSSION

A claim of employer liability for a hostile environment can be established under Title VII when: (1) the employee suffered intentional discrimination because of the plaintiff's gender; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) respondeat superior liability exists. Andrews v. City of Philadelphia, 895 F.2d

1469, 1482 (3d Cir. 1990). While Russo has presented no evidence to support his claim, the Court will view his Complaint and the supporting papers as his sworn testimony and will assume, for the purpose of this Motion, that his testimony would be consistent with his sworn allegations. Even in this expansive light, however, no reasonable inference could be drawn that McBrearty stalked Russo because of his sex. There is absolutely no evidence available as to her motivation and any inference that could be drawn would be the result of pure speculation.

The United States Supreme Court recently repeated that conduct not severe enough to create an objectively hostile or abusive work environment is beyond Title VII's purview. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)). The Court further instructed district courts to consider the social context in which particular behavior occurs when judging the severity of the harassment. Id. "Common sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing . . . and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive." Id. Here, one loan instance of "stalking" is insufficient to constitute a hostile environment. In fact, the loan act that Russo considers hostile or abusive did not even occur in the workplace. Rather,

the social context of a maintenance department suggests that all types of abusive acts could occur in this workplace, yet, Russo can present evidence of only one act. Further, Russo has presented no evidence that he was detrimentally affected, or that a reasonable person would be detrimentally affected by one incident of stalking.

An employer is liable under respondeat superior, the fifth prong of the Andrews test, if the harassment: (1) is committed within the scope of the offender's employment; (2) the employer was negligent or reckless in failing to train, discipline, fire, or take remedial action when learning of the harassment; or (3) the offender relied upon apparent authority or was aided in the commission of the tort by the agency relationship. Bonenberger v. Plymouth Township, 132 F.3d 20, 26 (3d Cir. 1996). Here, none of the three prongs support respondeat superior liability: (1) MvBrearty's stalking took place away from work; (2) after Russo complained of the stalking, he had no further direct contact with McBrearty; and (3) there is no evidence that McBrearty had any authority to exercise over Russo or was aided in her stalking of Russo by any authority.

Accordingly, the evidence presented supports none of the elements that Russo must demonstrate in order to establish a hostile environment. Henderson's Motion for Summary Judgment is granted.

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POSTMASTER GENERAL,	:	
UNITED STATES POSTAL SERVICE,	:	
Defendant.	:	NO. 00-CV-4619

MEMORANDUM & ORDER

AND NOW, this 22nd day of May, 2001, upon consideration of the Motion for Summary Judgment of Defendant, William J. Henderson (Doc. No. 9), to which no Response has been filed, and after an independent review of the record in this case, it is ORDERED that the Motion for Summary Judgment is GRANTED.

Judgment is ENTERED in favor of Defendant William J. Henderson and against Plaintiff, Daniel Russo.

BY THE COURT:

JAMES MCGIRR KELLY, J.